

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6305 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
A.S. GOSAI

Versus

GUJARAT STATE WARWHOUSING CORPN.

-----  
Appearance:

MR NV ANJARIA for Petitioner

MR S TRIPATHY for Respondent No. 1

-----  
CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 03/08/96

ORAL JUDGEMENT

The petitioner challenges the order of his dismissal dated 3.9.1992 at Annexure-D to the petition passed by the Managing Director of the respondent Corporation and seeks reinstatement in service with all consequential benefits. The only contention raised at the hearing of this petition on behalf of the petitioner was that the petitioner was not supplied with the inquiry

report before passing the dismissal order. The petitioner was suspended during the inquiry by an order dated 19.12.1988. The charges levelled against him were of misappropriation in relation to fuel advance and other irregularities. The Inquiry Officer exonerated him of all the charges but the Competent Authority held that the Inquiry Officer had overlooked various facts while exonerating him. The Competent Authority did not accept the report of the Inquiry Officer and gave a show cause notice on 18.6.1992 indicating the reasons for not accepting the report. The petitioner gave his reply to that show cause notice dated 29.6.1992 and 18.8.1992. In the letter dated 18.8.1992, a copy of which is annexed at Annexure-E, the petitioner had in terms pointed out that he was not given a copy of the inquiry report and sought for a copy thereof. The earlier reply he had given under protest presumably because the copy of the inquiry report was not supplied to him. The Competent Authority in the impugned order did not refer to this request of the petitioner.

Since the petitioner was already exonerated by the Inquiry Officer, if he had been supplied with the report of the inquiry he could have pointed out to the Disciplinary Authority that the Inquiry Officer had not, in fact, overlooked any material aspect as was held by the Competent Authority. Having regard to the nature of allegations and the findings arrived at by the Disciplinary Authority it does appear that a grave prejudice was caused to the petitioner by non-supply of the inquiry report. The impugned order of dismissal on the petitioner cannot therefore be sustained and is hereby set aside. The petitioner will stand reinstated in the same position in which he was, i.e. under suspension, at the time of the passing of the impugned order and he shall be paid the suspension allowance from today. As regards arrears of subsistence allowance for the intervening period i.e. from the date of dismissal order till today the petitioner will make an appropriate application before the concerned authority which will be duly considered and decided upon treating the petitioner as if he had remained under suspension during this period.

The inquiry against him will proceed further after supplying him a copy of the inquiry report from that stage onwards. The Competent Authority will give him adequate opportunity of hearing before making any final order which should be made without being influenced by the earlier findings and order of the Competent Authority. The question whether the petitioner should be paid backwages or not will depend upon the ultimate order that may be passed by the Competent Authority. The

Competent Authority will deal with the matter expeditiously and take a decision within two months from the date of service of this order. Rule is made absolute accordingly with no order as to costs.

ooooo